

RICKEY A. BEAVER,	)	
	)	
Plaintiff,	)	CASE NO. C04-337C
	)	
v.	)	
	)	
JASON COGGER, <i>et al.</i>	)	ORDER DECLINING TO SERVE
	)	COMPLAINT AND GRANTING
Defendants.	)	LEAVE TO AMEND
	)	

24 Having reviewed the complaint, the court finds that it is deficient in several respects.

25 Therefore, the court declines to order that the complaint be served on defendants unless and until

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1 plaintiff corrects the deficiencies identified below:

2 (1) On the form that plaintiff used to file his complaint, the very first question is whether  
3 plaintiff had brought any other lawsuits in federal court. Plaintiff's answer was "1." However, the  
4 court's own research reveals that plaintiff has filed a total of *four lawsuits*, in addition to the present  
5 one.<sup>1</sup> Whether plaintiff's omission was intentional or inadvertent, plaintiff is reminded that he  
6 signed the form "under penalty of perjury." Plaintiff must list all the his former and current lawsuits  
7 when he files an amended complaint, as further described below.

8 (2) Plaintiff must clarify the role of defendant Jason Cogger. Plaintiff's complaint does  
9 not state whether "Jason Cogger" is a public employee or a private individual. If Cogger is not a  
10 public employee, or state actor, then he is not amenable to suit under § 1983. *See Crumpton v.*  
11 *Gates*, 947 F.2d 1418, 1420 (9<sup>th</sup> Cir. 1991).

12 (3) Prosecutors are generally shielded from liability in § 1983 actions when they are  
13 acting pursuant to their official role as advocate for the State, performing functions "intimately  
14 associated with the judicial phase of the criminal process." *Imbler v. Pachtman*, 424 U.S. 409, 430  
15 (1976). Prosecutorial immunity does not extend, however, to actions by a prosecutor that are  
16 administrative or investigative in nature. *See Buckley v. Fitzsimmons*, 509 U.S. 259, 271-73  
17 (1993). Plaintiff's allegations in the instant complaint appear to concern actions that the two  
18 prosecutors took solely in their roles as advocates. In order avoid having his claims against these  
19 prosecutors barred by their immunity, plaintiff must allege facts showing that the prosecutors were  
20 acting in administrative or investigative roles.

21 (4) In order to proceed on his claim that he was deprived of his medications, plaintiff  
22 must show that he has exhausted any and all grievance procedures that were available to him while  
23 detained. 42 U.S.C. § 1997e(e) ; *see Booth v. Churner*, 531 U.S. 956 (2001). Plaintiff may satisfy  
24 this requirement by providing a copy of the final grievance resolution showing how the medication

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26 <sup>1</sup> The Case Numbers are: C01-1318Z, C01-1514C, C02-2476L, C04-265RBL.

1 issue was resolved. If plaintiff is unable to obtain a copy, he must so inform the court and explain  
2 why.

3 (5) **If plaintiff chooses to continue with this lawsuit, then he must file an amended**  
4 **complaint curing the above-mentioned deficiencies within 30 days of the date on which this**  
5 **Order is signed.** All of the allegations he wishes to pursue in this action must be contained in that  
6 amended complaint. The amended complaint must carry the same case number as this one, and will  
7 operate as a complete substitute for his present complaint. **If no amended complaint is timely**  
8 **filed within 30 days, the court will recommend that this matter be dismissed under 28 U.S.C.**  
9 **§ 1915(e)(2)(B)(ii) for failure to state a claim upon which relief can be granted.**

10 (6) The court notes that plaintiff has filed a motion for appointment of counsel. The  
11 court will defer consideration of the motion until plaintiff has filed an amended complaint correcting  
12 the above deficiencies.

13 (7) To assist plaintiff in filing an amended complaint, the Clerk is directed to send a copy  
14 of the civil rights complaint form to plaintiff. In addition, the Clerk shall send plaintiff a copy of this  
15 Order and the General Order for *pro se* litigants, and shall send the Honorable John C. Coughenour  
16 a copy of this Order.

17 DATED this \_\_8\_\_ day of March, 2004.

18 \_\_\_\_\_/S/ Ricardo S. Martinez\_\_\_\_\_  
19 RICARDO S. MARTINEZ  
20 United States Magistrate Judge  
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